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GOVERNMENT OF TRIPURA
LAW DEPARTMENT
SECRETARIAT : AGARTALA

NO.F.11(4)-Law/Lib/2013/9806-07 Dated, Agartala, the 9th October, 2019.

Subject: - Re-publication of Central Ordinance, 2019 in the State Gazette.

9/10/19

(Sankha Subhra Datta)
[Under Secretary, Law]
Government of Tripura

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
LEGISLATIVE DEPARTMENT

NO.2 (17)/19-Leg.I Dated, New Delhi, the 19th September, 2019.

To

The Law Secretaries to all the State Governments.

Subject: The Prohibition of Electronic-Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019 (Ordinance No.14 of 2019).

I am directed to state that the afore mentioned Ordinance has been promulgated by the President on 18th September, 2019 and published in the Gazette of India, Extraordinary, Part-II, Section 1, dated 18th September, 2019, which is available on the official website @ www.egazette.nic.in. It is requested that the same may be downloaded and re-published in the State Gazette for general information.

2. The receipt of this letter with its enclosures may kindly be acknowledged.

19/09/19

(MAHESH CHAND)
for Secretary to the Govt. of India.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 18th September, 2019/Bhadra 27, 1941 (Saka)

THE PROHIBITION OF ELECTRONIC CIGARETTES (PRODUCTION, MANUFACTURE, IMPORT, EXPORT, TRANSPORT, SALE, DISTRIBUTION, STORAGE AND ADVERTISEMENT) ORDINANCE, 2019

No 14 of 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance to prohibit the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes in the interest of public health to protect the people from harm and for matters connected therewith or incidental thereto;

WHEREAS India is a signatory to the World Health Organisation Framework Convention on Tobacco Control adopted in Geneva, Switzerland on 21st day of May, 2003 which came into force on the 27th day of February, 2005;

AND WHEREAS the Conference of Parties established under article 23 of the said Convention took a decision on the 18th day of October, 2014 to invite the Parties to the Convention to consider prohibiting or regulating the electronic cigarettes or the Electronic Nicotine Delivery Systems and the Electronic non-Nicotine Delivery Systems, including as tobacco products, medicinal products, consumer products or other categories, as appropriate, taking into account a high level of protection for human health;

AND WHEREAS the Conference of Parties took a decision to urge the Parties to the Convention to consider banning or restricting advertising, promotion and sponsorship of the said Delivery Systems;

AND WHEREAS since these devices are injurious to health and proliferation of these products has negative impact on public health, it is expedient to prohibit the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes as enjoined by article 47 of the Constitution of India;

AND WHEREAS article 51 of the Constitution of India requires the State to endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. (*1*) This Ordinance may be called the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019.

(*2*) It shall come into force at once.

Declaration as to expediency of control by Union.

2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the electronic cigarettes industry.

Definitions.

3. In this Ordinance, unless the context otherwise requires,—

(*a*) "advertisement" means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website or social media and includes through any notice, circular, label, wrapper, invoice or other document or device;

(*b*) "authorised officer" means—

(*i*) any police officer not below the rank of sub-inspector; or;

(*ii*) any other officer, not below the rank of sub-inspector, authorised by the Central Government or the State Government by notification;

(*c*) "distribution" includes distribution by way of samples, whether free or otherwise and the expression "distribute" shall be construed accordingly;

(*d*) "electronic cigarette" means an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, e-*Hookah* and the like devices, by whatever name called and whatever shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940. 23 of 1940.

Explanation.—For the purposes of this clause, the expression "substance" includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour;

(*e*) "export" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(*f*) "import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(*g*) "manufacture" means a process for making or assembling electronic cigarettes and any part thereof, which includes any sub-process, incidental or ancillary to the manufacture of electronic cigarettes and any part thereof;

(*h*) "notification" means a notification published in the Official Gazette;

(*i*) "person" includes —

(*i*) any individual or group of individuals;
(*ii*) a firm (whether registered or not);
(*iii*) a Hindu Undivided Family;
(*iv*) a trust;
(*v*) a limited liability partnership;
(*vi*) a co-operative society;
(*vii*) any corporation or company or body of individuals; and
(*viii*) every artificial juridical person not falling within any of the preceding sub-clauses;

(*j*) "place" includes any house, room, enclosure, space, conveyance or the area in like nature;

(*k*) "production" with its grammatical variations and cognate expressions, includes the making or assembling of electronic cigarettes and any part thereof;

(*l*) "sale" with its grammatical variations and cognate expressions, means any transfer of property in goods (including online transfer) by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale.

Prohibition on production, manufacturing, import, export, transport, sale, distribution, advertisement of electronic cigarettes.

4. On and from the date of commencement of this Ordinance, no person shall, directly or indirectly,—

(*i*) produce or manufacture or import or export or transport or sell or distribute electronic cigarettes, whether as a complete product or any part thereof; and

(*ii*) advertise electronic cigarettes or take part in any advertisement that directly or indirectly promotes the use of electronic cigarettes.

Prohibition on storage of electronic cigarettes.

5. On and from the date of commencement of this Ordinance, no person, being the owner or occupier or having the control or use of any place shall, knowingly permit it to be used for storage of any stock of electronic cigarettes:

Provided that any existing stock of electronic cigarettes as on the date of the commencement of this Ordinance kept for sale, distribution, transport, export or advertisement shall be disposed of in the manner hereinafter specified—

(*a*) the owner or occupier of the place with respect to the existing stock of electronic cigarettes shall, *suo moto*, prepare a list of such stock of electronic cigarettes in his possession and without unnecessary delay submit the stock as specified in the list to the nearest office of the authorised officer; and

(*b*) the authorised officer to whom any stock of electronic cigarettes is forwarded under clause (a) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to the law for the time being in force.

Power to enter, search and seize without warrant.

6. (*1*) An authorised officer, if he has reason to believe that any provision of this Ordinance has been, or is being contravened, may enter and search any place where—

(*a*) any trade or commerce in electronic cigarettes is carried on or electronic cigarettes are produced, supplied, distributed, stored or transported; or

(b) any advertisement of the electronic cigarettes has been or is being made.

(*2*) After completion of the search referred to in sub-section (*1*), the authorised officer shall seize any record or property found as a result of the search in the said place, which are intended to be used, or reasonably suspected to have been used, in connection with any matter referred to in sub-section (*1*) and if he thinks proper, take into custody and produce, along with the record or property so seized, before the Court of Judicial Magistrate of the first class, any such person whom he has reason to believe to have committed any offence punishable under this Ordinance.

(*3*) Where it is not practicable to seize the record or property, the officer authorised under sub-section (*1*), may make an order in writing to attach such property, stocks or records maintained by the producer, manufacturer, importer, exporter, transporter, seller, distributer, advertiser or stockist about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with any offence in contravention of the provisions of this Ordinance and such

order shall be binding on the person connected with the said offence.

(*4*) All searches, seizures and attachment under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973. 2 of 1974.

Punishment for contravention of section 4.

7. Whoever contravenes the provisions of section 4, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees.

Punishment for contravention of section 5.

8. Whoever contravenes the provisions of section 5, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

Jurisdiction and trial of offences.

9. (*1*) Any person committing an offence under section 4 or section 5 shall be triable for such offence in any place in which he is liable to be tried under any law for the time being in force.

(*2*) All offences under this Ordinance shall be tried by the Court of Judicial Magistrate of the first class in accordance with the procedure provided for trials in the Code of Criminal Procedure, 1973. 2 of 1974.

Power to dispose of stock seized.

10. After completion of the proceedings before the Court and if it is proved that the stock seized by the authorised officer under the provisions of this Ordinance are stocks of electronic cigarettes, such stocks shall be disposed of in accordance with the provisions contained in Chapter XXXIV of the Code of Criminal Procedure, 1973. 2 of 1974.

Offences by Companies.

11. (*1*) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Ordinance has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director" means a whole-time director in the company and in relation to a firm, means a partner in the firm.

Cognizance of offences.

12. No court shall take cognizance of an offence punishable under this Ordinance, except upon a complaint in writing made by an authorised officer under this Ordinance.

2 of 1974.

Offences to be cognizable.

13. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under section 4 shall be cognizable.

Ordinance to have overriding effect.

14. Save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Application of other laws not barred.

15. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes.

Protection of action taken in good faith.

16. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Ordinance.

Power to remove difficulties.

17. (*1*) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by an order published in the Official Gazette, make such

provision not inconsistent with the provisions of this Ordinance, as may appear to be necessary or expedient for removing the difficulty.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.